CHIEF JUSTICE MARSHALL AND VIRGINIA, 1813–1821

CHIEF JUSTICE MARSHALL was a man of strong political convictions, and it is the political significance of his opinions which must ever receive the larger share of the historian's attention. Marshall's appointment to the high office he so long adorned was most unwelcome to Virginia, for it was expected that Ellsworth's successor would be nominated by Jefferson. Judge Spencer Roane, son-in-law of Patrick Henry, a stanch and trusted Republican leader, was "slated" for the position.[1] A timely resignation of the Connecticut chief justice opened the way for resolute John Adams to fill this most important position with the ablest of Southern Federalists; but from the day of Marshall's appointment to the end of Jefferson's life the Sage of Monticello planned for the removal of the great judge or for the essential curbing of the powers of his court. Two bitterer political enemies never lived within the bounds of the Old Dominion than Jefferson and Marshall.

When, fourteen years after Marshall's appointment, he came into collision with his own state, Virginia was Jefferson's pocket borough, and few men, John Randolph alone excepted, ever held important office at the hands of her people against his wishes. The Old Dominion was held firmly in the grasp of the Republican organization; and the Supreme Court of Appeals, presided over since 1803 by Roane, was probably the most important wheel in the political machine. Its members were all men of real distinction, well trained and masters of constitutional law both American and English. One of them, William H. Cabell, had been Jefferson's protégé; all had had a hand in the elevation of the first Republican president. Roane was the court's chief ornament, and Republican Virginia boasted that her own chief justice was an abler lawyer and statesman than Marshall himself, whose ability, however, was never questioned.

Roane was a close student of the law after the "Coke on Littleton" style;[2] he was familiar with the writings of Grotius, Locke and Montesquieu, and an ardent admirer of George Mason. He had been a leader of the Henry forces in 1788 when the great

[1] *Virginia Law Register,* II. 480.

[2] *Branch Historical Papers,* II. 1, 6.

fight against the national Constitution was made and lost;[1] and there can be no doubt that he never quite forgave Marshall and Madison for their work on that occasion. After the election of Jefferson he seems to have acquiesced in the existing order of things, though he threatened to give the peace-loving President no end of trouble by his repeated agitation in favor of war against England. In 1804 he founded the Richmond *Enquirer* and placed his cousin Thomas Ritchie in charge.[2] He and Ritchie and the Virginian "prophet of secession", John Taylor of Caroline, succeeded to the management of the Republican machine which Jefferson and Madison had built in 1796–1800. In 1815 Roane was the most powerful politician in the state. He nominated members of the legislature and caused them to be elected, he drew bills and resolutions which the law-makers passed almost without amendment; and when the sessions closed his friend, Ritchie, usually published a "leader" in the *Enquirer* headed "Well done, good and faithful servants"[3]

The first open conflict between Chief Justice Marshall and this machine came in the year 1815, when the United States Supreme Court in *Martin v. Hunter's Lessee* overruled the decision of the Virginia Court of Appeals.[4] The case was an old one. The first suit, it would appear, that Marshall argued before the General Court of Virginia was that of *Hite v. Fairfax* in which he appeared as counsel for Fairfax. The question at issue was the title to large tracts of land lying between the Rappahannock and Potomac rivers. The Fairfax grant from the English crown in 1736 had been declared null and void by the state of Virginia in 1782, the property having fallen to Denny Fairfax, an "alien enemy" living in the county of Kent, England. The unoccupied land belonged thenceforth to the state. Hite had taken out a patent from the state and settled on the land. Fairfax took steps in the proper local court to eject Hite and failing to gain his point appealed to the General Court of Virginia, predecessor of the Court of Appeals. Marshall urged with great force that Fairfax had been unlawfully deprived of his property;[5] he was not sustained by the court. But the later chief justice had made himself familiar with this notable case. In April 1789 David Hunter was granted a patent for 788 acres of the Fairfax lands. Unable to get possession in the face of opposition from Fairfax he brought suit in 1793 in the district

[1] *Ibid.*, II. 47.
[2] *Virginia Law Register*, II. 481; J. Q. Adams, *Diary*, IV. 313–314.
[3] Letters to his son. *Branch Historical Papers*, II. 123–126.
[4] 1 Wheaton, 313.
[5] 4 Call, *Reports*, 42; Thayer, *John Marshall*, 24–27.

court of Virginia for Shenandoah County. The district court gave judgment for Fairfax and appeal was taken to the Supreme Court of Virginia. Meanwhile Fairfax died and bequeathed his claims and rights to Philip Martin. The case was argued before the supreme court of which Roane was one of the justices in May, 1796, in October, 1809, and in April, 1810, when decision was finally given against the Fairfax claim and in support of the act of confiscation of 1782. Appeal was taken to the United States Supreme Court on the ground that rights guaranteed by the Treaty of 1783 were denied.

The United States Supreme Court in accordance with Jefferson's wishes had become Republican, that is, a majority of its members had been followers of Jefferson at the time of their appointment. Jefferson and Virginians in general hoped that constitutional questions would henceforth be decided contrary to Marshall's views.

The "Fairfax" case was one of great importance, involving the title to many thousand acres of the best land in Virginia and threatening the authority of the state to dispose of those lands. The validity of an act of the legislature passed before the close of the Revolutionary War was in question.

The United States Supreme Court reviewed the decision of the Virginia court in 1813 and a mandamus issued by Marshall the "first Monday" in August following was served on the latter requiring the execution of judgment as given by the local court in favor of the Fairfax heirs. The Judges of the Virginia Supreme Court took up the matter in the summer of 1815, each one preparing his own opinion independently of the others. Roane spent a part of the summer at the White Sulphur Springs, where he talked over his forthcoming opinion with Monroe, who neither endorsed nor opposed its contentions. On his return he visited Jefferson,[1] who also hesitated to express a view without first examining the argument that might be offered on the other side.[2] On December 16, 1815,[3] the Supreme Court of Virginia formally announced that the mandamus of the United States Supreme Court would not be obeyed and that so far as Virginia was concerned its former decision would stand, *i. e.,* the Fairfax heirs would lose what was claimed under the treaty of 1783. In February following, the opinions of the Virginia justices were published in the Richmond *Enquirer.* There was not a dissenting voice. They stood on the ground that the United States courts could not constitutionally

[1] Jefferson, *Writings,* IX. 530–531; *Branch Historical Papers,* II. 1, 131.

[2] Jefferson, *Writings,* IX. 531.

[3] *Virginia Reports,* 4 Munford, 12.

interfere with or reverse the decision of state tribunals acting within their jurisdictions, and that no treaty obligations had been impaired, since the confiscatory act of the Virginia legislature had been passed before the cessation of hostilities. The point which the national court had made, in issuing the mandamus, that Virginia had not actually taken possession before 1783, and that she could not do so afterwards was scarcely noticed. Roane's paper was a political manifesto designed to advance the cause of state sovereignty and to arouse hostility towards Marshall, who seemed still to dominate the national court. Public discussion was at once aroused and the local court was fully sustained in its refusal to honor the mandamus. John Taylor of Caroline took up his pen once more on behalf of state rights and the *Enquirer* "thundered" against the great chief justice who was again proving false to the "ancient Dominion".

The United States Supreme Court had made the tactical blunder of ordering the state court to reverse its own decision and to execute an opposing judgment. Roane had made full use of his opportunity.[1] Marshall and his fellow judges took immediate notice of the refusal of Virginia to recognize the mandamus of 1813[2] and went once again over the case, reaffirming the points formerly made. Story now delivered the opinion of the court, Johnson still dissenting. These opinions were published in the *National Intelligencer* and reprinted in the Virginia papers. The United States marshal for Western Virginia was ordered to execute the judgment of the Supreme Court. This was the first "pass at arms" between the Virginia school of states-rights advocates and the great chief justice. To the popular mind the point that Marshall had sought to make was that a state was subordinate to the Union; Roane had shown that a state could refuse obedience to the national authority with impunity.

The second conflict between the two great opposing theories of government came immediately after the decision of the case of *McCulloch v. Maryland* in March, 1819. In this case the crucial arguments for the Virginia chief justice and his powerful following were those which endorsed the doctrine of "implied powers"—a subject so full of difficulties that both Madison and Monroe had halted at its determination—and declared that a state law inconsistent with the reasonable purpose of a national statute was null and void. For the Supreme Court thus to solve great political problems

[1] Conversation with Chief Justice Keith of Virginia, a close connection of the Marshall family.

[2] 1 Wheaton, 304.

seemed to Roane a usurpation of power. Southern leaders of opinion had frequently denied the authority of the national courts to determine the constitutionality of an act of Congress.[1] It was indeed an important matter. No court in Europe wielded such supreme power. Marshall had himself in the Virginia Convention of 1788 declared that such powers were not contemplated in the proposed national constitution.[2] But he evidently came to the conclusion later that the "fathers" had intentionally left some of these points vague. He was now firmly convinced that the exercise of permanent powers must be conceded to some branch of the national government. The "Maryland" opinion was then an enunciation of the doctrine of the court on the "implied powers" of the Constitution and the right of the court, already asserted in *Marbury v. Madison,* to interpret and apply acts of Congress.

Roane had probably helped Marshall to this view of the functions of the national Supreme Court, for he had won fame for himself in 1792 by delivering the opinion that the Supreme Court of Virginia possessed authority to interpret and apply the constitution and laws of the state, declaring the latter void if necessary. During and immediately after the Revolution this final and revisionary power was assumed by the courts of North Carolina, New Jersey, Virginia and Rhode Island. Long before 1815 it was regarded as a settled feature in the governments of many of the states. How easy must it have been then for judges of the national courts, reasoning by analogy, to claim and exercise the same authority in respect to the national constitution and laws. This was seen and openly admitted to be right and proper by some of Jefferson's most influential states-rights followers.

There was no way for Roane judicially to review the *McCulloch v. Maryland* opinion, as there had been in the former case; but nothing daunted he took up his pen in the *Enquirer,* under the pseudonym of "Amphictyon" in March and under that of "Hampden" in June, 1819. In these papers Roane took the ground of the Kentucky and Virginia resolutions, quoting *in extenso* from those documents and declaring that if Marshall's view held, the "rights and freedom of the people of the states" were lost, and that it might be necessary for Virginia to employ physical force.[3] He aroused much excitement in Virginia and the discussion went

[1] Letter of John Steele, influential Southern Federalist, to Nathaniel Macon, April 2, 1803, in Dodd, *Life of Macon,* 184; also opinion of Charles Pinckney in Thayer, *John Marshall,* 66.

[2] Elliot, *Debates,* III. 555–557.

[3] *Branch Historical Papers,* II. 1, 76; also Resolutions introduced in the Virginia Assembly, December, 1819.

steadily on until late in the summer. A significant complaint was that the United States Supreme Court which had been supposed to be Republican in sentiment had proven to be a bulwark of the new Federalism.[1]

Roane sent copies of his articles to Jefferson and Madison asking at the same time for a public expression of their opinions. Madison declined to give a positive view; Jefferson endorsed heartily all Roane said characterizing the decision of the Supreme Court in *McCulloch v. Maryland* as a usurpation, but he begged to be excused from participating "in all contests of opinion".[2] Monroe who had half endorsed the attitude of Roane in *Hunter v. Martin's Lessee* was also appealed to, but of course he could not as president openly express an opinion.

Chief Justice Marshall was aroused by these bitter attacks. He said in a letter to Story a few days after Roane's first article appeared:[3] "Our opinion in the Bank case has aroused the sleeping spirit of Virginia, if indeed it ever sleeps." And again on May 27: "The opinion in the Bank case continues to be denounced by the democracy in Virginia. An effort is certainly making to induce the legislature which will meet in December to take up the subject and to pass resolutions not very unlike those which were called forth by the alien and sedition laws." In view of the influence and pressure Virginia might bring to bear upon the leaders of other states, he exhorted his friends to exert themselves to get counter resolutions endorsing the position of the Supreme Court adopted. For, he insisted, if Roane's principles should prevail, "the constitution would be converted into the old confederation". Marshall's friends did not bestir themselves. The politicians and newspapers, especially of Virginia, turned their guns on another "usurper", General Jackson, whose high-handed measures in Florida produced wide-spread discussion, and the pressure on the Supreme Court was relieved.

It was but a short two years, however, before another decision of the Supreme Court set Roane's pen in motion. This time it would appear that Marshall had with "malice aforethought" dragged the state of Virginia, contrary to the eleventh amendment to the Constitution, before the bar of his court. It was in the case of *Cohens v. the State of Virginia.* Two points were at issue: (1) the validity of a state law prohibiting the sale of lottery

[1] Roane's fourth article in the Richmond *Enquirer* for June 22; also in *Branch Historical Papers,* II. 1, 118.

[2] Jefferson, *Writings,* X. 140–142.

[3] *Proceedings of the Massachusetts Historical Society,* second series, XIV. 324.

tickets in Virginia by the agents of a company organized under the laws of the District of Columbia; (2) whether an agent of such corporation could appeal from an adverse decision of the state courts to the United States courts, a state being a party to the suit.

Virginia had made the selling of lottery tickets a misdemeanor punishable with a fine of a hundred dollars for each offense. But under a recent act of Congress the District of Columbia had licensed a lottery which was expected, of course, to do business in Virginia and Maryland. Venders of tickets in Norfolk were arrested and tried before the borough court and fined $100 each. No appeal was taken to the General Court in Richmond, which might have reviewed the case; but a writ of error was allowed by the local court, without objection from the state's counsel, and the controversy went to the United States Supreme Court. The state of Virginia now became the defendant in the national court. Though the evidence on this point is not quite conclusive, it is pretty clear that the state's counsel had made no objection to the appeal, thinking it an excellent opportunity to test the question whether a state could be haled into the United States Court. Philip P. Barbour and other able attorneys were engaged by the state of Virginia. They pleaded want of jurisdiction in the trial which followed. Marshall ruled that the fine laid by the Norfolk court must be paid, not because the law of Virginia held as against an agent of a corporation chartered by Congress, but because it had not been intended to force the business of the lottery company into states having laws to the contrary, Congress not having purposely acted on this point.

The second and main question, whether the court had jurisdiction, Marshall decided in the affirmative, declaring that all parties to suits in which the constitution, laws or treaties of the nation were involved or in which rights claimed under them were denied, might appeal from any state court to the United States Supreme Court, and that the incident of a state's being a party to the litigation did not effect the case.[1]

Roane and his party were stronger now than ever before. After an understanding, it would seem, as to who should lead the fight, the Virginia chief justice began on May 25 the publication under the pen-name of "Algernon Sidney" of his most famous series of articles against Judge Marshall. They constitute a commentary on the national constitution from the standpoint of states' rights. Roane could not deal calmly with his subject. His language

[1] 6 Wheaton, 264.

is violent and sometimes offensive. "The judgment now before us," he declared, "will not be less disastrous in its consequences, than any of these memorable judgments [of the courts of Charles I.]. It completely negatives the idea, that the American states have a real existence, or are to be considered, in any sense, as sovereign and independent states."[1] While in other countries, he maintained, the judiciary is said to be the weakest of the several departments of government, and has been limited to the mere causes brought before it, ours aspires to a more elevated function. It claims the right not only to control the operations of the co-ordinate departments of its own government, but also to settle exclusively the chartered rights of the states. He cited Marshall's speech in the Virginia convention of 1788,[2] showing that the chief justice had then denied that a state could be "dragged" before the bar of the federal court; declared that he wanted no revolutions, no rebellion, but a frequent recurrence to fundamental principles; yet he solemly admonishes his readers that the sovereignty of Virginia must be maintained, suggesting that slavery itself was not safe under Marshall's decisions. However, his rebuke and warning to his fellow-partizans bear a significant hint as to the real nature of the contest: "Yet, Republicans! I greatly fear that your sins have overtaken you. I deeply regret that you are found sleeping at your posts, and that you could not watch one hour! I greatly fear that the day of retribution is at hand. The scepter of power is about to depart from you. . . . The hair of the federal Samson has again begun to grow and with it [its] power and strength."

With this series of papers from Roane other articles appeared from week to week, like small artillery to the accompaniment of the big guns. About the same time, too, John Taylor of Caroline published his book, *Construction Construed,* which at once elicited the hearty commendation of most Southern politicians.

If the legislature of 1819 barely missed joining the fray, that of 1821 plunged into the thick of the fight. Preparation was made to re-enact the resolutions of 1798 and to call for the purging of the Supreme Court. Jefferson was still an active influence in Virginia. His son-in-law, Thomas M. Randolph, was governor. Ritchie, Roane and John Taylor enjoyed his fullest confidence All had long been opponents of the national judiciary and enemies of Marshall. Jefferson had silently approved and encouraged Roane's attacks on Marshall since 1815. Now he wrote a letter commending John Taylor's most timely book, *Construction Con-*

[1] Richmond *Enquirer,* May 25, 1821; *Branch Historical Papers,* II. 2. 80.

[2] Elliot, *Debates,* III. 555–557.

strued, which Ritchie was to publish in the editorial column of the *Enquirer.* Even Madison was reported in Richmond as disapproving the decision in the Cohens case.

The people of Virginia, suffering peculiarly from the economic and financial crisis which had been on for a year or two, were ready to blame some one for all their ills. Roane led them to think that the policy of the United States government, or at least of Congress, had begun to go wrong, and that Marshall, a Virginian, was the arch-enemy of the state. The time seemed ripe for bringing the national judiciary to terms, for silencing the chief justice at any rate.

Marshall recognized the danger of the coming storm. He wrote Story, June 15, 1821: "The opinion of the Supreme Court in the Lottery case has been assaulted with a degree of virulence transcending what has appeared on any former occasion. . . . There is on this subject no such thing as a free press in Virginia and of consequence the calumnies and misrepresentations of this gentleman [Roane] will remain uncontradicted and will by many be believed to be true. He will be supposed to be the champion of state rights, instead of being what he really is, the champion of dismemberment."[1] Then complaining of the vast influence exerted by Jefferson he adds in a letter of July 13, 1821: "I cannot describe the surprize and mortification I have felt at hearing that Mr. Madison has embraced them [these Virginia views] with respect to the judicial department. . . . In support of the sound principles of the constitution and of the Union of the States not a pen is drawn. In Virginia the tendency of things verges rapidly to the destruction of the government and the re-establishment of a league of sovereign states. I look elsewhere for safety."[2]

Having heard that Hall, the editor of the *American Law Journal,* then published in Philadelphia, would probably print Roane's "Algernon Sidney" papers, Marshall advises Story to exert himself to prevent such an unfortunate event. He would thus deny the freedom of the press to Roane, the lack of which he laments in Virginia, or, if the papers must be printed, he thought the editor "ought to say that he published that piece by particular request", meaning by request of Jefferson,[3] for Marshall thought it was only through Jefferson's influence that Roane could get a place in the *Law Journal.* Growing more despondent than was his wont our great chief justice repeats the language of a former letter:

[1] *Proceedings of the Massachusetts Historical Society,* second series, XIV. 327.
[2] *Ibid.,* 328, 329.
[3] *Ibid.,* 330.

"A deep design to convert our government into a mere league of states has taken strong hold of a powerful and violent party in Virginia." He closes this interesting part of his letter as follows: "The whole attack, if not originating with Mr. Jefferson, is obviously approved and guided by him. It is therefore formidable in other states as well as in this, and it behoves the friends of the union to be more on the alert than they have been. An effort will certainly be made to repeal the 25th section of the judicial act."

It was indeed no half-hearted attack which Roane and the *Enquirer* were leading. The Washington *Gazette,* rival to the *National Intelligencer,* took up the cause of Virginia. De Witt Clinton of New York, again powerful in his own state and in the country generally, openly defended Roane's position.[1] The Louisiana *Advertiser* and other Southern papers as well as practically all the Virginia press espoused vigorously the cause of state supremacy. The sentiment of the toasts of the Fourth of July following was largely particularist; only in Richmond—an ancient stronghold of Federalism—do we find public speakers with the hardihood to defend the Supreme Court and the chief justice.

The next step was to be taken by the legislature. The plan was to pass the most drastic resolutions. But here the *National Intelligencer* calls to mind the action of Virginia in 1809 when, on losing in the famous Olmstead case, Pennsylvania had appealed to her sister states to aid her in resisting the national authority. Popular opinion in Pennsylvania then favored the establishment of a special tribunal for the settlement of just such questions as that now exciting so much attention. Virginia had then in quite positive language declared that the Supreme Court was the last resort and that it was the duty of the states to abide by its rulings.[2]

Nevertheless Governor Randolph, direct from Jefferson's roof, made the Supreme Court the chief item of his message in December 1821. A passage of it runs: "The commonwealth has undergone the humiliation of having endeavoured in vain to vindicate and assert her rights and her sovereignty at the bar of the Supreme Court of the United States, and now endures the mortification, . . . of having altogether failed to procure a disavowal of the right, or the intention, to violate that sovereignty and those rights. . . . It [the Supreme Court of the United States] arrogates to itself, always, the high authority to judge exclusively in the last resort how far the federal compact is violated, and to arraign before it,

[1] Richmond *Enquirer,* August 31, 1821.

[2] *Virginia Senate Journals,* December 4, 1809; *House Journals,* January 23, 1810; Ames, *State Documents on Federal Relations,* pp. 49–50.

not only the decisions of the state courts, but the states themselves."[1] The message closes with an almost too emphatic assertion that none but peaceful means of redress will be resorted to.

Meanwhile R. M. Johnson of Kentucky introduced resolutions into the United States Senate looking to the correction of the abuse.[2] From Johnson's speech it will be seen that a plan of co-operation between Virginia, Kentucky and Ohio had been arranged.[3] The Virginia agitation found ready ears in Kentucky and Ohio where ambitious banking schemes were likely to be, or already had been, upset by the Supreme Court. Roane now drafted an amendment to the national constitution, as he said to strengthen the proposed reform; but which was to pass the Virginia assembly and then to be sent to the other states for endorsement. A letter to Archibald Thweatt, December 11, 1821, gives us a suggestive hint as to how things used to be done in legislative bodies: "With a view to aid them, or rather to lead on this important subject, I have prepared some amendments to the constitution to be adopted by our assembly. They are very mild, but go the full length of the wishes of the republicans on this subject. They will be copied by another hand and circulated among the members. I would not wish to injure the great cause by being known as the author."[4] The following prospective amendment was endorsed almost without opposition: "That the judicial power of the United States shall not be construed to extend to any case in which a state shall be a party, except in controversies between two or more states, nor to any other controversies involving the rights of a state and to which such state shall claim to become a party. That no appeal shall be construed to lie to any court of the United States from any decision rendered in the courts of a state."[5] But neither Johnson's resolutions in the Senate nor those of the Virginia Assembly ever reached the heart of the North; and Congress never once seriously considered the proposition to remove the great chief justice.

Such was the outcome of Marshall's long conflict with Virginia. There had been much of bitterness and there was even to the last a resolute and large party ready to take revolutionary steps against the Supreme Court. But Jefferson thought the political constellation unpropitious; indeed Roane charged both him and Madison with "hanging back too much in this great crisis". The old statesmen

[1] *Virginia House Journals,* December 3, 1821.

[2] *Annals,* 17 Cong., I. 28, 68–123.

[3] H. V. Ames, *Proposed Amendments to the Constitution* (A. H. A. 1896, II.), p. 161.

[4] *Branch Historical Papers,* II. 1, 140.

[5] *Virginia House Journals,* February 2, 1822.

had, however, served their day; they were not disposed to embark on another campaign of agitation like that of 1798. Jefferson advised that, since the Missouri question had so divided the states and given occasion for such outspoken threats on the part of Virginia leaders, any attempt now to force the issue with the Supreme Court would cause a re-alignment of the states after the manner of the recent dispute and thus defeat their designs. "She [Virginia] had better lie by therefore until the shoe shall pinch an Eastern state. Let the cry be first raised from that quarter and we may fall into it with effect."[1] He then advised the Virginia delegation in Congress to press for a change in the method of choosing judges, appointment for terms of six years instead of for life, the House of Representatives also to have the right of confirmation. This he thought would bring the court into closer touch with the people.[2] He had never ceased to be alarmed by the decisions of Marshall and thought Roane's position impregnable. He said, "This doctrine [of Marshall] was so completely refuted by Roane, that if he can be answered, I surrender human reason as a vain and useless faculty, given to bewilder, and not to guide us."[3]

Roane had solemnly warned Virginia in these replies to Marshall that slavery would be doomed under such a constitution as his opponent expounded; he spoke of secession as a lawful alternative to submission to the Supreme Court; and yet admitted that forcible resistance would be revolution. But Virginia was not then ready to cross the Rubicon, and Roane died six months after the inglorious close of his "movement", thinking that his work had all been in vain. The "shoe pinched" in South Carolina within the space of a single twelvemonth. Robert Barnwell Rhett of that state began where Roane left off, and drawing constantly upon the Virginia magazine so recently filled he began and continued an agitation which forced Calhoun to recant his ardent nationalism in 1828, and which swept the South two decades later into Texas annexation, ceasing not until the Roane-Marshall debate was settled in the awful tribunal of civil war.

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[1] Jefferson to Nathaniel Macon, October 20, 1821. Jefferson, *Writings*, X. 193–194.

[2] *Ibid.*, 198.

[3] *Ibid.*, 229.